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EXAMINER

WON, BRIAN D

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,493	Applicant(s) CHALVIGNAC, PHILIPPE	
	Examiner BRIAN WON	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-10, 12-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to the amendment filed on 04/13/09. Applicant has amended claims 1, 3, 9, 10 and 12 and cancelled claims 8 and 11. Currently, claims 1-7, 9-10 and 12-19 are pending in the instant application.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the removable connection comprising a thread pitch and means for clipping the removable module must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 and 4-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 1, the removable module “removably connectable to the console” is a new matter which was not described in the specification. Examiner notes that on page 15, lines 16-17 of specification and in figure 5, applicant states that the ventilator can be disassembled but does not disclose the module being removably connected to the console. Regarding claim 4-5, the removable connection comprising “a thread pitch” and “means for clipping the removable module” is a new matter which was not described in the specification. Examiner notes that on page 12, lines 11-13, applicant states the module is “fixed in a removable manner on the mask by removable fastening means such as for example means comprising a thread pitch, or clipping mean” but not removable connected to the console.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (20030066527) in view of Kullik et al. (20030172930).

Regarding claims 1, 3 and 6. Chen discloses a console (5) which can include electric members for controlling or for actuating the device (see para. 27), a fan (ventilator) device (2) for drawing air into the mask, a mask (10) for allowing the patient to receive pressurized gas, the fan integrated into a removable module being removably connected to the console (the console can also be removed from the fan (see figure 5)). Chen does not disclose a sensor for acquiring a parameter representative. However, Kullik teaches in figure 2, a sensor (10) in a rotatory compressor (ventilator) (3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the module of Chen with a sensor such that breathing gas can be analyzed.

Regarding claim 2, the modified reference of Chen discloses the removable module comprising a pressure and flow sensor (see para. 18 of Kullik)

Regarding claim 4, Chen discloses the removable connection comprising a thread pitch on the fastener (54) (see figure 5).

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6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (20030066527) in view of Kullik et al. (20030172930) as applied to claims 1-4 and 6 above, and further in view of Schoelz et al. (6349964).

Regarding claim 5, Chen discloses a removable connection between the module and the console but does not disclose connection comprising means for clipping the removable module. However, clipping mechanism is well known in the art and is also taught by Schoelz, wherein Schoelz teaches a blower (50) and battery casing (62) removable connected to one another by means of a clip (64) (see column 2, lines 14-19). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the removable connection of Chen with a clipping mechanism as taught by Schoelz such for easier removable of the module (or console).

7. Claims 1, 7, 9-10, 12-14 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik et al. (20030172930) in view of Reedy et al. (6382208).

Regarding claim 1, Kullik discloses in figure 2, a console (5, 6) including a controller (5) for operating the device; a compressor (ventilator) for providing pressurized respiratory gas integrated into a removable module (see para. 14, lines 6-11); a mask (2) for allowing the patient to receive pressurized gas; a sensor (10). Kullik does not disclose the removable module being removably connected to the console. However, Reddy teaches a releasable jack (56) for disconnecting the respirator (10) from the console (24). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the electrical connection between

the compressor and the console of Kullik with a releasable jack of Reedy such that the console can be conveniently be removed when the device is not in use.

Regarding claim 7, Kullik discloses in figure 2, the mask (2) not having means allowing leaks. Examiner also notes that the mask can avoid leaks depending on the tightness or the fitting of the mask to the user.

Regarding claim 9, Kullik discloses the removable module being linked to a control console (6) of the device with a link (4).

Regarding claim 10, Kullik discloses a link allowing (4) data to be transmitted between the removable module and console (see para. 16).

Regarding claim 12, Kullik discloses a link (4) helping to convey energy (5) required to operate components of the removable module from console (see para. 16).

Regarding claim 13, Kullik discloses a link (4) being a wired link (Figure 1).

Regarding claim 14, Kullik discloses a ventilator being an axial ventilator (see para. 14, lines 11-13).

Regarding claim 18-19, the device of Kullik is capable of performing in a BPAP or CPAP mode, depending on the need of the user since Kullik's device comprises controller for controlling the pressure and speed of the ventilator motor (see para. 19).

8. Claims 15-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik et al. (20030172930) in view of Reedy et al. (6382208) as applied to claims 1, 7, 9-10, 12-14 and 18-19 above, and further in view of Jay (6050262).

Regarding claim 15, Kullik does not expressly disclose the rotor of the axial ventilator being a single staged. However, Jay teaches a removable module (8) with a

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single stage rotor (10) (see figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the module of Kullik with a module comprising a single stage rotor as taught by Jay for easier manufacturing.

Regarding claim 16, the modified reference of Kullik discloses (see figure 1-2 of Jay) the input (28) and output (6) of respiratory gas being substantially parallel (see arrow in figure 2).

Regarding claim 17, the modified reference of Kullik discloses (see figure 2 of Jay), an input (28) substantially aligned with an axis of rotation of a rotor (10) of the ventilator (8), an outlet (18) allowing flux generated by rotor to be collected according to an oblique direction relative to axis of rotation (see airflow in Figure 2), and means for rectifying flux that is generated and collected, so that the generated and collected flux flows out of the ventilator in a general direction substantially parallel to axis of rotation of the rotor of the ventilator (see the airflow coming out of connector (6) in Figure 2).

Response to Arguments

9. Applicant's arguments with respect to claims 1-7, 9-10 and 12-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O' Connor (4590951), Bowen (6257235), Mukaiyama et al. (6854464), Heins et al. (5303701) and Ho (6435184) teaches masks for providing respiratory gas.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN WON whose telephone number is (571)270-7129. The examiner can normally be reached on Monday thru Friday, 9:00 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN WON/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771